



January 29, 2004

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: Network for Instructional TV, Inc.
WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's
Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational
and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands.

Ex Parte Submission

Dear Ms. Dortch:

This *Ex Parte Submission* is in response to a January 8, 2004 meeting between NIA/CTN and FCC staff, reported in a January 9 *Ex Parte Submission*, and the January 15, 2004 meeting between NIA/CTN and others with FCC staff, reported in a January 16, 2004 *Ex Parte Submission* (collectively referred to herein as "*Ex Parte Filers*"), where these parties indicated their opposition to opening eligibility so that ITFS licenses could be held by commercial interests.

On the issue of eligibility, we seem to be caught in a triangle of unmanageable conflicts, with: (1) the FCC's desire at one point of the triangle on encouraging the fullest uses of the spectrum; (2) EarthLink's proposal at another point of the triangle proposing open eligibility, but only for the commercially more desirable low-band and high-band portions of the band; and (3) NIA/CTN standing at the third point of the triangle insisting that educators must keep all spectrum, despite the fact that the current rules already allow up to eight ITFS channels to be held by commercial interests where eight vacant ITFS channels are available in that area.

NITV suggests, again, that there is a fourth alternative that should be considered toward a) full use of spectrum, b) involving the commercial sector, c) while providing protection for educational communications. That alternative is to:

1. allow educators continued full use of spectrum, or lease options, as now set forth in the rules;
2. provide educators the option, at their discretion, to sell ITFS spectrum to commercial interests, if they can show the FCC that they will use the acquired funds or other consideration to fulfill their educational mission; and
3. provide for an educational set-aside of five percent of any spectrum sold to the commercial sector for the continued use of the original educator licensee/local educational community.

Leaving educators with only mid-band spectrum, as Earthlink suggests, and leaving educators potentially, saddled with the entire cost of operating that spectrum, will not encourage auction participation because this approach is likely to diminish interest by educators fearful that no commercial party will provide operational support if ITFS is left only with the mid-band.

Keeping unwanted spectrum in the hands of local educators will not encourage full spectrum utilization across all markets. Educators should have the right to choose which spectrum/technology they want to use in order to fulfill their educational missions.

For these reasons, NITV fully supports *Ex Parte Filers'* objection to the Earthlink proposal and believes that NITV's suggested alternative provides the appropriate balance to the competing interests at stake in the ITFS eligibility triangle.

Respectfully submitted,

/s/

Thomas A. Pyle,
Executive Director/CEO
Network for Instructional TV, Inc.

